

Message Text

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EXDIS

E.O. 11652: N/A

TAGS: EINV,

SUBJECT: BRIEFING MEMORANDUM: PROPOSED STATEMENT OF ROBERT
INGERSOLL BEFORE PROXIMIRE SUBCOMMITTEE ON PRIORITIES AND
ECONOMIES IN GOVERNMENT OF THE JOINT ECONOMIC COMMITTEE
MARCH 3, 1976

FOR THE SECRETARY FROM EB, JOSEPH GREENWALD

I AM PLEASED TO BE HERE TODAY TO DISCUSS A SERIOUS
PROBLEM WHICH BEARS DIRECTLY ON U.S. FOREIGN RELATIONS AND
ECONOMIC INTERESTS: THE REVELATIONS ABOUT ALLEGED CORRUP
PRACTICES INVOLVING U.S. MULTINATIONALS ABROAD.

FIRST, LET ME AGAIN STATE EMPHATICALLY THAT THE
DEPARTMENT OF STATE CONDEMNS IN THE STRONGEST TERMS ANY
AND ALL CORRUPT PRACTICES INVOLVING CORPORATIONS, WHETHER
U.S. OR FOREIGN. WE HAVE HAD OCCASION TO STATE THIS
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POSITION IN SEVERAL FORUMS RECENTLY BUT I WANT TO REITERATE
IT HERE SO THAT ALL THE COMMENTS I MAKE TO YOU TODAY CAN
BE PLACED IN THAT FRAMEWORK. THE VIEW OF THE DEPARTMENT--
AND MY OWN PERSONAL VIEW AS ONE WITH EXPERIENCE IN BUSINESS

AND GOVERNMENT--IS THAT ILLICIT PAYMENTS OR OTHER QUESTION-
ABLE PRACTICES CANNOT BE COUNTENANCED.

-- THEY ARE ETHICALLY WRONG;

-- THEIR DISCLOSURE CAN UNFAIRLY TARNISH THE
REPUTATIONS OF RESPONSIBLE AMERICAN BUSINESSMEN;

-- THEY MAKE IT MORE DIFFICULT FOR THE UNITED
STATES GOVERNMENT TO ASSIST U.S. FIRMS IN THE
LAWFUL PURSUIT OF THEIR LEGITIMATE BUSINESS
INTERESTS ABROAD;

-- SUCH ACTIVITIES COMPLICATE OUR RELATIONS WITH
FRIENDLY FOREIGN GOVERNMENTS;

-- THEY ARE, IN THE LONG RUN, BAD BUSINESS, AS FIRMS
INVOLVED IN SUCH PRACTICES RISK LOSS OF CONTRACTS,
SALES AND EVEN PROPERTY;

-- THEY CONTRIBUTE TO A DETERIORATION OF THE GENERAL
INVESTMENT CLIMATE.

THE U.S. HAS TAKEN THE POSITION THAT ANY INVESTOR WHO
MAKES ILLEGAL PAYMENTS CANNOT LOOK TO THE GOVERNMENT TO
PROTECT HIM FROM LEGITIMATE LAW ENFORCEMENT ACTIONS BY THE
RESPONSIBLE AUTHORITIES OF EITHER THE HOST COUNTRY, OR THE
UNITED STATES. WE SUPPORT COOPERATION BY THE UNITED
STATES AGENCIES INVESTIGATING THESE CASES WITH RESPONSIBLE
FOREIGN AUTHORITIES SEEKING INFORMATION CONSISTENT WITH
THE REQUIREMENTS OF THE LAWS AND PROCEDURAL FAIRNESS.
HOWEVER, THE UNITED STATES GOVERNMENT WILL PROVIDE APPRO-
PRIATE DIPLOMATIC PROTECTION TO AMERICAN NATIONALS ABROAD
WHO ARE NOT TREATED FAIRLY IN ACCORDANCE WITH INTERNATIONAL
LAW. WE ARE CONCERNED AT THREATS OF EXTRA-JUDICIAL
SANCTIONS WHICH MAY BE DISPROPORTIONATE TO THE OFFENSE AND
BASED ON UNPROVED ALLEGATIONS. WE DO NOT BELIEVE THAT
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ECONOMIC RETALIATION IS AN APPROPRIATE RESPONSE TO PAYMENTS
WHICH, ALTHOUGH CONTROVERSIAL, ARE EITHER LAWFUL UNDER THE
FOREIGN LAW CONCERNED, OR IF UNLAWFUL, ARE SUBJECT TO
SPECIFIC CIVIL OR CRIMINAL PENALTIES PRESCRIBED BY THAT
LAW. OF COURSE, WE ALSO OPPOSE SUCH RETALIATION FOR

IN INTERNATIONAL DISCUSSIONS OF ENTERPRISE BEHAVIOR,
THE U.S. HAS SUPPORTED TWO BASIC PRINCIPLES:

-- FIRST, ALL SOVEREIGN STATES HAVE THE RIGHT TO
SUPERVISE AND REGULATE THE ACTIVITIES OF FOREIGN
INVESTORS (PROVIDED NATIONAL LAW DOES NOT FALL

BELOW THOSE MINIMUM STANDARDS OF JUSTICE CALLED

FOR BY INTERNATIONAL LAW); AND

-- SECOND, INVESTORS MUST RESPECT THE LAWS OF THE NATIONS IN WHICH THEY OPERATE AND CONDUCT THEMSELVES AS GOOD CORPORATE CITIZENS OF THESE NATIONS, REFRAINING FROM IMPROPER INTERFERENCE IN THEIR INTERNAL AFFAIRS.

UNFORTUNATELY, HOWEVER, IN THESE MATTERS FOREIGN INVESTORS AND TRADERS ARE NOT ALWAYS FACED WITH CLEAR-CUT CHOICES IN UNAMBIGUOUS CIRCUMSTANCES. INSTEAD THEY FREQUENTLY FIND THEMSELVES OPERATING IN A LAND WHERE THE RULES ARE UNCLEAR AND WHERE LOCAL CUSTOMS AND BUSINESS METHODS ARE QUITE REMOVED FROM THOSE LEARNED IN BUSINESS SCHOOL. A FOREIGN INVESTOR WHO RECEIVES "SUGGESTIONS" FROM OFFICIALS OF THE HOST GOVERNMENT IS PLACED IN A DIFFICULT POSITION. MANY COURAGEOUS BUSINESSMEN HAVE REFUSED TO GO ALONG WITH QUESTIONABLE PRACTICES ABROAD, AND IN SOME CASES THEY HAVE HAD TO FOREGO BUSINESS OPPORTUNITIES AS A RESULT.

IN DISCUSSIONS WITH BUSINESS REPRESENTATIVES, WE HAVE BEEN TOLD THAT BUSINESSMEN FROM OTHER COUNTRIES TAKE THE VIEW THAT "IMPROPER" PAYMENTS ARE A BASIC REQUIREMENT OF THE SOCIETIES IN WHICH THEY OPERATE, AND REPRESENT CENTURIES-OLD PRACTICES WHICH NO AMOUNT OF INDIGNATION OR LEGISLATION CAN CHANGE. THESE BUSINESSMEN ARE RELUCTANT
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TO PRESS FOR EITHER DOMESTIC OR INTERNATIONAL ACTION FOR FEAR THAT NOT ONLY WILL THIS NOT CHANGE THE SITUATION, BUT AN EFFORT TO REGULATE THESE PRACTICES WOULD BE AN ADDED BURDEN TO COMMERCE AND COULD PROVIDE A DANGEROUS INSTRUMENT FOR SELECTIVE APPLICATION AGAINST INDIVIDUAL CORPORATIONS. SOME AMERICAN BUSINESSMEN PROBABLY SHARE THIS POINT OF VIEW, BUT INCREASING NUMBERS ARE CONCLUDING THAT SOME ACTION IS NECESSARY TO DEAL WITH THE SITUATION.

THE QUESTION, THEN, IS WHAT SHOULD BE DONE? OBVIOUSLY, THE PRINCIPAL RESPONSIBILITY FOR DEALING WITH CRIMINAL ACTS IN FOREIGN COUNTRIES IS THAT OF THE GOVERNMENTS DIRECTLY CONCERNED. HOWEVER, WE TOO HAVE A RESPONSIBILITY TO MAKE SURE THAT US LAWS REGULATING CORPORATE BEHAVIOR ARE VIGOROUSLY ENFORCED AND THAT USG PROGRAMS IN FOREIGN COUNTRIES ARE EFFECTIVELY MANAGED TO GUARD AGAINST THESE PRACTICES. THE RESPONSIBLE US AGENCIES ARE ALREADY TAKING SIGNIFICANT STEPS. THE IRS AND THE SEC ARE REVIEWING THEIR REGULATIONS AND HAVE STRENGTHENED THEM WHERE APPROPRIATE.

THE DEPARTMENTS OF STATE AND DEFENSE ARE TAKING STEPS TO ENSURE THAT FOREIGN GOVERNMENTS WHO PARTICIPATE IN OUR FMS PROGRAM ARE FULLY INFORMED OF AGENTS' FEES THAT ARE INCLUDED IN THOSE CONTRACTS. IN SEVERAL CASES FOREIGN GOVERNMENTS HAVE ESTABLISHED POLICIES THAT CONTINGENT FEES ARE NOT TO BE ALLOWED ON FMS CONTRACTS. THE USG HAS ADOPTED THAT POLICY IN THOSE CASES. WE BELIEVE THAT OUR PROCEDURES ON FMS SALES CAN BE FURTHER IMPROVED AND SUPPORT THE CONCEPT OF MORE SYSTEMATIC DISCLOSURE ALONG THE GENERAL LINES OF THE CHURCH-PERCY AMENDMENT TO THE SECURITY ASSISTANCE ACT.

HOWEVER, THIS IS AN INTERNATIONAL PROBLEM NOT LIMITED TO ANY ONE COUNTRY OR ANY ONE INDUSTRY, AND IF SIGNIFICANT PROGRESS IS TO BE MADE IT WILL HAVE TO BE ON A BROAD SCALE. IT IS TEMPTING TO TRY TO DEAL WITH THE SITUATION UNILATERALLY BUT THERE ARE SERIOUS RISKS FOR THE US IN SUCH AN APPROACH. THERE IS WIDESPREAD RECOGNITION IN THE CONGRESS THAT UNILATERAL ACTION BY THE US WOULD PUT THE US COMPANIES AT A SERIOUS DISADVANTAGE IN THE EXPORT TRADE.

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SENATE RESOLUTION 265, ADOPTED BY A VOTE OF 93-0 ON NOVEMBER 12 LAST YEAR, TAKES NOTE OF THE TRADE DISTORTING EFFECT OF CORRUPT PRACTICES AND CALLS UPON THE EXECUTIVE BRANCH TO NEGOTIATE A MULTILATERAL AGREEMENT TO DEAL WITH THE PROBLEM.

WE HAVE SEEN DRAMATIC EVIDENCE, IN RECENT WEEKS OF THE POTENTIAL CONSEQUENCES OF DISCLOSURE IN THE US OF EVENTS WHICH AFFECT THE VITAL INTERESTS OF FOREIGN GOVERNMENTS. PRELIMINARY RESULTS HAVE INCLUDED SERIOUS POLITICAL CRISES IN SEVERAL FRIENDLY COUNTRIES, POSSIBLE CANCELLATION OF MAJOR OVERSEAS ORDERS FOR US INDUSTRIES AND THE RISK OF GENERAL COOLING TOWARDS US FIRMS ABROAD. MANY FOREIGN COMMENTATORS AND OPINION-MAKERS HAVE EXPRESSED CONCERN ABOUT THE EFFECTS OF U.S. PROCESSES IN THEIR COUNTRIES AND SUGGESTED THAT AS A LEADER OF THE FREE WORLD THE UNITED STATES HAS A RESPONSIBILITY TO TAKE INTO ACCOUNT THE INTERESTS OF ITS ALLIES WHEN IT IS CLEANING UP ITS OWN HOUSE.

WE THINK THERE ARE MANY ADVANTAGES TO A MULTILATERAL APPROACH WHICH IS BASED ON INTERNATIONAL AGREEMENT AS TO THE BASIC STANDARDS TO BE APPLIED ON INTERNATIONAL TRADE AND INVESTMENT AND THE PROCEDURES TO BE UTILIZED TO CURTAIL CORRUPT PRACTICES. AN INTERNATIONAL AGREEMENT WOULD ENSURE THAT ACTION WOULD BE TAKEN AGAINST THOSE WHO SOLICIT OR ACCEPT PAYMENTS AS WELL AS THOSE WHO OFFER OR MAKE THEM. A COORDINATED ACTION IN WHICH THE MAJOR EXPORTING COUNTRIES PARTICIPATE WOULD ALSO BE AN EFFECTIVE WAY TO PREVENT

IMPROPER ACTIVITIES INTERNATIONALLY. AS A FIRST STEP WE HAVE NEGOTIATED STRONG LANGUAGE ON CORRUPT PRACTICES IN THE VOLUNTARY GUIDELINES FOR MULTINATIONAL CORPORATIONS WHICH

ARE BEING DRAWN UP IN THE OECD, AND SIMILAR LANGUAGE CAN BE INCLUDED IN OTHER NON-BINDING CODES WHICH MAY BE DEVELOPED IN THE UN AND THE OAS. HOWEVER, WHEN IT COMES TO THE AREA OF CRIMINAL LAW, SUCH AS BRIBERY, EFFECTIVE ACTION CONSISTENT WITH INDIVIDUAL RIGHTS MUST BE IN ACCORDANCE WITH ESTABLISHED LEGAL PROCEDURES. THUS, IN THIS AREA WE FAVOR ACTION IN ACCORDANCE WITH NATIONAL LAW AND INTERNATIONAL AGREEMENTS.

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THEREFORE, I WOULD LIKE TO TAKE THIS OCCASION TO ANNOUNCE THAT THE US IS PROPOSING A BINDING INTERNATIONAL AGREEMENT ON CORRUPT PRACTICES.

THE AGREEMENT WOULD BE BASED ON THE FOLLOWING PRINCIPLES:

-- IT WOULD APPLY TO INTERNATIONAL TRADE AND INVESTMENT TRANSACTIONS WITH GOVERNMENTS, I.E., GOVERNMENT PROCUREMENT AND OTHER GOVERNMENTAL ACTIONS AFFECTING INTERNATIONAL TRADE AND INVESTMENT AS MAY BE AGREED;

-- IT WOULD APPLY EQUALLY TO THOSE WHO OFFER OR MAKE IMPROPER PAYMENTS AND TO THOSE WHO REQUEST OR ACCEPT THEM;

-- HOST (IMPORTING) GOVERNMENTS WOULD AGREE TO (1) ESTABLISH CLEAR GUIDELINES CONCERNING THE USE OF AGENTS IN CONNECTION WITH GOVERNMENT PROCUREMENT AND OTHER COVERED TRANSACTIONS AND (2) ESTABLISH APPROPRIATE CRIMINAL PENALTIES FOR DEFINED CORRUPT PRACTICES BY ENTERPRISES AND OFFICIALS;

-- GOVERNMENTS WOULD COOPERATE TO HELP ERADICATE CORRUPT PRACTICES;

-- UNIFORM PROVISIONS WOULD BE AGREED FOR DISCLOSURE BY ENTERPRISES, AGENTS, AND OFFICIALS OF POLITICAL CONTRIBUTIONS GIFTS, AND PAYMENTS MADE IN CONNECTION WITH COVERED TRANSACTIONS.

OUR DELEGATION TO THE SECOND SESSION OF THE UN COMMISSION ON TRANSNATIONAL CORPORATIONS, NOW MEETING IN LIMA, HAS BEEN INSTRUCTED TO CALL FOR SUCH A TREATY.

AT THIS TIME, I WOULD LIKE TO SAY A FEW WORDS ABOUT THE LOCKHEED CASE. A NUMBER OF FOREIGN GOVERNMENTS HAVE EX-

PRESSED GREAT CONCERN ABOUT DISCLOSURES RESULTING FROM
SENATE INVESTIGATIONS OR REPORTS ATTRIBUTED TO THOSE INVE-
STIGATIONS THAT ARE SAID TO IMPLICATE HIGH OFFICIALS IN
VARIOUS COUNTRIES. THESE GOVERNMENTS HAVE REQUESTED THE

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DEPARTMENT OF STATE'S ASSISTANCE TO OBTAIN THE DOCUMENTATION
NECESSARY TO INVESTIGATE THESE ALLEGATIONS.

THE DEPARTMENT'S POSITION HAS ALWAYS BEEN TO COOPERATE
FULLY WITH FOREIGN GOVERNMENTS WHOSE INTERESTS ARE AFFECTED
BY THESE DISCLOSURES. HOWEVER, THE DEPARTMENT ITSELF
DOES NOT HAVE THE CORPORATE DOCUMENTS IN QUESTION.
THESE, WHERE THEY EXIST, ARE HELD BY LOCKHEED, BY THE
SENATE SUBCOMMITTEE ON MULTINATIONAL CORPORATIONS, AND BY
THE SEC SUBJECT TO A COURT ORDER.

OVER THE PAST DAYS WE HAVE BEEN CONSULTING WITH THE
SEC AND WITH THE DEPARTMENT OF JUSTICE TO DEVELOP A
PROCEDURE THAT WOULD FACILITATE THE EXCHANGE OF INFORMATION
WITH INTERESTED FOREIGN GOVERNMENTS. I CAN NOW ANNOUNCE
THAT THE DEPARTMENT OF JUSTICE IS PREPARED, ON BEHALF OF
THE UNITED STATES GOVERNMENT AS A WHOLE, TO COOPERATE
FULLY WITH THE RESPONSIBLE LAW ENFORCEMENT AGENCIES OF
OTHER INTERESTED GOVERNMENTS AS IT HAS DONE IN PAST CASES
OF INTEREST TO MORE THAN ONE GOVERNMENT. IT WILL ARRANGE
FOR THE EXCHANGE OF INFORMATION IN ACCORDANCE WITH THE
PROCEDURES TRADITIONALLY ESTABLISHED TO PROTECT THE
INTEGRITY OF CRIMINAL INVESTIGATIONS AND THE RIGHTS OF
INDIVIDUALS AFFECTED. SHOULD THIS EXCHANGE OF INFORMATION
REQUIRE MODIFICATION OF THE COURT ORDER IN THE SEC-
LOCKHEED CASE, THE GOVERNMENT WILL BE PREPARED TO PROPOSE
SUITABLE AMENDMENTS TO THE COURT.

I SHOULD ALSO LIKE TO COMMENT ON PRESS REPORTS THAT
HAVE GIVEN THE ERRONEOUS IMPRESSION THAT THE STATE DEPART-
MENT HAS NOT BEEN RESPONSIVE TO THE REQUEST OF FOREIGN
GOVERNMENTS FOR INFORMATION DEVELOPED ON THIS CASE. THIS
IS NOT THE CASE. THE DEPARTMENT HAS BEEN CONCERNED THAT
PREMATURE DISCLOSURE OF UNSUBSTANTIATED CHARGES AGAINST
FOREIGN OFFICIALS MIGHT UNFAIRLY DAMAGE THE RIGHTS OF
INDIVIDUALS AND CAUSE SERIOUS PROBLEMS IN UNITED STATES
RELATIONS WITH OTHER COUNTRIES. HOWEVER, WE HAVE NEVER
QUESTIONED THE NEED FOR FRIENDLY FOREIGN GOVERNMENTS TO
HAVE ACCESS TO THE INFORMATION TO CARRY ON THEIR OWN
LEGITIMATE INVESTIGATIONS, AND WE HAVE TAKEN APPROPRIATE
STEPS TO FACILITATE THAT ACCESS. AS FAR AS PUBLIC DIS-
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CLOSURE IS CONCERNED, THE SENATE SUBCOMMITTEE HAS ESTABLISHED ITS OWN POLICIES WITH RESPECT TO THE HANDLING OF DOCUMENTS AND INFORMATION. IN THE CASE OF THE SEC INVESTIGATION OF LOCKHEED, THE DEPARTMENT REQUESTED THE JUSTICE DEPARTMENT TO FILE A SUGGESTION OF INTEREST WITH THE FEDERAL DISTRICT COURT SUPPORTING SEC'S ACCESS TO ALL LOCKHEED DOCUMENTS BUT URGING THE COURT TO RETAIN JURISDICTION SO AS TO AVOID PREMATURE DISCLOSURE OF ALLEGATIONS

CONCERNING FOREIGN OFFICIALS IF, AND ONLY IF, THAT COULD BE ACCOMPLISHED WITHOUT IMPEDING THE SEC INVESTIGATION. THE PROTECTIVE ORDER ISSUED BY THE COURT, WHICH IS CONSISTENT WITH THE DEPARTMENT'S POSITION, PERMITS DISCLOSURE IF THE SEC ULTIMATELY DETERMINES THAT DISCLOSURE IS NECESSARY TO ENFORCE THE SECURITIES LAWS.

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CONCURRENCE: EB/IFD:PBOEKER
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